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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/527,398	03/16/2000	Maximino Aguilar	AUS000147US1	1549

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EXAMINER

SURYAWANSHI, SURESH

ART UNIT	PAPER NUMBER
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2115

DATE MAILED: 08/12/2004

17

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/527,398

Applicant(s)

AGUILAR ET AL.

Examiner

Suresh K Suryawanshi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 5/17/04 appeal brief.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-28 and 30-38 is/are rejected.
- 7) ☒ Claim(s) 7 and 29 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 August 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. Claims 1-38 are presented for examination.

#### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stickley Software, Inc (Subject: Re: Boot Flash Advice Please; Newsgroups: comp.arch.embedded; date: 1/29/1997; Message 7 in thread; herein as Stickley) in view of Huh et al (US Patent no 6,584,559 B1<sup>1</sup>).

4. As per claims 1, 10, 15, 23, 32, 37 and 38, Stickley teaches the claimed invention, comprising:

loading a current boot code from a non-volatile memory [load the boot code from the flash memory into the RAM];

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<sup>1</sup> Reference cited by examiner in previous office action, paper no. 8.

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initiating a boot sequence using the current boot code [execute the boot code from the RAM];

updating the boot code in the non-volatile memory prior to loading the operating system for the data processing system [overwrite the boot section of the non-boot partitioned flash memory].

In summary, Stickley teaches the modification of the information [current boot code] stored in the flash memory and stores the updated version of the information [modified boot code] in the flash memory thereafter. Stickley does not teach the detail in obtaining the updated version of the information stored in the flash memory. Specifically, Stickley does not teach the searching of a storage device for the updated version of the information stored in the flash memory.

Huh et al teach the detail to update the information stored in the flash memory. Specifically, Huh et al search the storage device [disk<sup>1</sup>] for the updated version of the information [firmware] stored in the flash memory [the system determines whether any new firmware is present to upgrade or replace the old firmware, col. 4, lines 29 – 30]. If the updated version is present, Huh et al update the current version accordingly [col. 6, lines 15 – 16].

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of Stickley and Huh et al because they both teach how to

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<sup>1</sup> The new firmware can be stored in a disk, col. 3, lines 44 - 45.

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update information stored in the flash memory. Stickley does not detail how to obtain the updated information. Huh et al teach detail to obtain the updated version of information stored in the flash memory thereby allowing Stickley to update the boot code stored in the flash memory.

5. As per claims 2, 20 and 24, Stickley teaches that the storage device is a non-volatile random access memory [flash memory].

6. As per claims 3, 12, 25 and 34, Stickley teaches that the operating system is stored on the storage device [inherent to a computer system].

7. As per claims 4 and 16, Stickley teaches that the storage device is a removable storage device locally connected to the data processing system [inherent to a computer system having a floppy drive, CD-ROM drive, etc.].

8. As per claims 5 and 27, Stickley teaches that loading the operating system using the current boot code if the updated boot code is absent [inherent to the system as the system is booting from the current boot code].

9. As per claims 6 and 28, Stickley teaches that replacing the current boot code with the updated boot code prior to loading the operating system [inherent to the system as the updated boot code will be written to the flash before loading the operating system].

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10. As per claims 8-9 and 30-31, Stickley discloses the invention substantially. Stickley does not teach that the updated boot code is present if a boot code is present on the storage device in which the boot code is a later version of the current boot code. Huh et al teach this in terms of a firmware upgrade [Fig. 3; col. 1, lines 55-59; col. 2, lines 50-52; col. 4, lines 23-38].

11. As per claims 11 and 33, Huh et al disclose that searching a local storage device for the updated information prior to loading the operating system [Fig. 3; col. 2, lines 50-52; col. 3, lines 44-46; col. 4, lines 23-38].

12. As per claims 13 and 35, Huh et al disclose that searching a storage device located remotely to the data processing system for the updated information prior to loading the operating system [col. 3, lines 44-48; as downloaded from another computational component, for example, from a web server].

13. As per claims 14 and 36, Huh et al disclose that the storage device is located on a server [col. 3, lines 46-48; web server].

14. As per claim 16, Huh et al disclose that updating of the current boot code instructions is performed by replacing the current boot code instructions in the first storage device with the updated boot code instructions in the second storage device [paragraphs 1-2].

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15. As per claim 17, Stickley teaches that the processor unit loads the operating system using the current boot code instructions if updated boot code instructions are absent [inherent to a computer system to boot from the current boot code].

16. As per claim 18, Huh et al disclose that the updated information instructions are present if any updated instructions are present on the second storage device [Fig. 3; col. 4, lines 24-38].

17. As per claim 19, Huh et al disclose that the updated information instructions are present if a newer version of the information instruction is present [Fig. 3; col. 1, lines 55-59; col. 4, lines 24-38].

18. As per claim 21, Stickley teaches that the second storage device is one of a removable non-volatile random access memory, a hard disk drive, a floppy disk, a CD-ROM, and a DVD-ROM [inherent in a computer system].

19. As per claim 22, Stickley teaches that the data processing system is one of a laptop computer, a palmtop computer, a personal computer, and a personal digital assistant [inherent to a computer system].

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***Allowable Subject Matter***

20. Claims 7 and 29 are objected to as being dependent upon a rejected base claim(s), but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

21. Applicant's arguments with respect to claims 1-38 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suresh K Suryawanshi whose telephone number is 703-305-3990. The examiner can normally be reached on 9:00am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas C. Lee can be reached on 703-305-9717. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.




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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

sks

August 2, 2004



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